

Office of the Attorney General  
State of Tennessee

Opinion No. 95-050  
May 15, 1995

E-911 Dispatcher serving as Judicial Commissioner

Thomas R. Frierson, II  
Hamblen County Justice Center  
510 Allison Street  
Morristown, TN 37814

QUESTION

Whether E-911 dispatchers and other personnel may also serve as judicial commissioners under T.C.A. §§ 40-5-202, et seq.

OPINION

These two positions are incompatible if an emergency dispatcher or other employee may, in the exercise of his or her job responsibilities, become acquainted with a case in which he or she may subsequently be asked to perform duties as a judicial commissioner.

ANALYSIS

You ask whether it is legally permissible for E-911 dispatchers and personnel to serve as judicial commissioners for the purpose of issuing arrest warrants and setting bail amounts. We assume you are referring to judicial commissioners appointed and serving pursuant to T.C.A. § 40-1-111, and T.C.A. §§ 40-5-201, et seq. These statutes outline the method by which the position of judicial commissioner may be created and filled within counties falling within certain population brackets.

The duties of judicial commissioners vary, depending on the statute pursuant to which they are appointed, but include issuance of arrest warrants; setting of bonds and recognizances; and the issuance of mittimus. T.C.A. § 40-5-201(b); T.C.A. § 40-1-111(a)(1)(A)(i), (ii) and (iii); T.C.A. § 40-1-111(d)(2)(A), (B) and (D). Commissioners appointed under T.C.A. § 40-1-111(a) may also issue search warrants and appoint attorneys for indigent defendants in accordance with law and guidelines established by the presiding general sessions judge of the county. T.C.A. § 40-1-111(a)(1)(A)(i) and (iii). Commissioners appointed under § 40-1-111(d) may issue search warrants where authorized by the general sessions judge or a judge or a court of record. No employee, officer or official of a county metropolitan government under T.C.A. § 40-5-201 may serve as a judicial commissioner in such county. T.C.A. § 40-5-202 (1992).

By the term "E-911 dispatchers and personnel," we assume you are referring to individuals employed by an emergency communications district in the county created under T.C.A. §§ 7-86-101, et seq. Such districts are not a department of the local government which creates them, but are separate governmental entities. Therefore, an employee of such a district would not be an employee of a county metropolitan government barred from serving as judicial commissioner under § 40-5-202. There are no other statutory bars which would prevent E-911 dispatchers and personnel from serving as judicial commissioners.

Under the common law, an individual is prohibited from holding incompatible public offices. State ex rel. v. Thompson, 193 Tenn. 395, 399, 246 S.W.2d 59 (1952). This

prohibition arises when an individual occupying both offices would have some supervisory authority over himself. Under T.C.A. §§ 7-86- 101, et seq., an emergency communications district is created to provide and coordinate emergency dispatch service through use of a single 911 primary emergency number. The statute indicates that a dispatcher answering all calls may decide the proper action to be taken and provide for the dispatch of emergency service units to answer the call; provide a requesting party with a telephone number for appropriate public safety agencies or other providers of emergency services; or transfer the call or relay information to appropriate public safety or emergency agencies. T.C.A. § 7-86-103 (Supp. 1994). These responsibilities do not appear to conflict with the duties of a judicial commissioner.

\*2 However, the Fourth Amendment to the United States Constitution requires that an impartial magistrate, rather than a prosecutor or police officer, make the determination, not only whether or not a search warrant shall issue, but also the specification of the articles to be seized and the place to be searched. Anthony v. Carter, 541 S.W.2d 157, 160 (Tenn. 1976); Sibron v. State of New York, 392 U.S. 40, 59 (1968). See also, Annot., 32 L.Ed.2d 970 (1968). It is possible that in some circumstances the same individual may be asked to perform duties as a judicial commissioner such as issuing an arrest warrant or a search warrant or setting bond in a case which he or she handled as an emergency dispatcher. Prior acquaintance with a case as an emergency dispatcher could prevent a judicial commissioner from executing his or her duties impartially. As a result, we think the duties of the two positions are incompatible if an emergency dispatcher or other employee may, in the exercise of his or her job responsibilities, become acquainted with a case in which he or she may subsequently be asked to perform duties as a judicial commissioner.

Charles W. Burson  
Attorney General and Reporter

Michael E. Moore  
Solicitor General

Ann Louise Vix  
Senior Counsel  
Tenn. Op. Atty. Gen. No. 95-050, 1995 WL 309924 (Tenn.A.G.)  
END OF DOCUMENT

Copr